IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

CRL.A.No. 48 of 2000(A)

CC.348/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEYYATTINKARA

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APPELLANT: COMPLAINANT

CHELLAYYAN NADAR, RAMAVILAS BUNGLOW, PAPPANAMCODE, NEMOM.

BY ADV. SRI.SASTHAMANGALAM G.GOPALAKRISHNAN NAIR
SRI.R.BINDU (SASTHAMANGALAM)

RESPONDENTS: ACCUSED AND STATE
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1. **STEPHEN, S/O. JOHN VALIPLAVILAKEEZHE THATTU PUTHEN VEEDU, NEMOM.**
2. **ANI S/O. KRISHNAN NADAR, ROADARIKATHU VEEDU, -DO- -DO-**
3. **GANGADHARAN, S/O. MUTHAYYAN, VADAKKUMKARA PUTHEN VEEDU -DO- -DO-**
4. **SASI, S/O. APPU NADAR, -DO- -DO-**
5. **BINU, S/O. SASI, -DO- -DO-**
6. **KOLAPPAN, VADAKKEKKARA VEEDU , -DO- -DO-**
7. **BALAN, -DO- -DO-**
8. **BIJU, -DO- -DO-**
9. **AUTO RAJAN, S/O. JOHN, THADATHARIKATHU VEEDU DO- D-O-**

tss

10. VINCENT, S/O. JOHNSON, VALIPLAVIAL VEEDU -DO-

**11. STATE, REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**BY ADV. SRI.B.SUDHEENDRA KUMAR
SRI.B.JAYASURYA
PUBLIC PROSECUTOR SRI.AMJAD ALI
SRI.G.SUDHEER**

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

K.R.UDAYABHANU, J

Crl.A.No.48 of 2000

Dated this the 4th day of September, 2007

JUDGMENT

The appellant is the complainant in C.C.No.348/96 with respect to the offences under Sections 447 and 427 read with Section 34 IPC which ended up in acquittal.

2. The complainant's case is that he is in possession of 55 cents of land in survey No.78/II and 84½ cents in survey No.77/II by virtue of a partition deed. There was fencing with barbed wire on all the four boundaries of the said property and on 5.4.1996 the accused, ten in number, trespassed into the property and destroyed the fencing etc. with sword and iron rod which resulted in loss to the tune of Rs.5,000/-. It is alleged that they also cut and removed a coconut tree and when he interfered the first accused brandished a chopper.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 4 and Ext. P1. The defence got examined DW1 and marked Ext. D1. Apart from the testimony of PW1, the complainant, the evidence of the witnesses to support the

complainant's case are the testimony of PWs' 2 and 3 who are his very close relatives. PW2 has admitted that he could not speak about the identity of the property in possession of PW1. He could not also recollect the individual acts committed by the accused. The same is the case with the version of PW3. PW4, the advocate commissioner, who inspected the property has stated that he could not depose as to the survey number of the property. No document was produced to prove the ownership or possession of the property. Further more it has been noted by the court below that in O.S.No.562/96 instituted by the complainant the alleged cause of action is mentioned as on 14.4.1996 and that with respect to the same cause of action in the present complaint the date of the incident is mentioned as 5.4.1996. It was in the light of the above evidence that the court below acquitted the accused. I find that no interference is called for in view of the uncertain nature of the evidence adduced at the instance of the complainant.

The appeal is dismissed.

K.R.UDAYABHANU,
JUDGE

csl

K.R.UDAYABHANU, J

Crl.R.P.No.405/2000

ORDER

16th August 2007